

§ 31.3

§ 31.3 Review within the Department of a determination that an amount is past due and legally enforceable.

(a) *Notification by debtor.* A debtor who receives a Notice of Intent has the right to present evidence that all or part of the debt is not past due or not legally enforceable. To exercise this right, the debtor shall send a letter notifying the applicable delegatee of the HHS Departmental Claims Officer specified in § 31.11 that the debtor intends to present evidence to a designated hearing officer. The letter must be received by such designated claims officer within 60 calendar days from the date of the Department's Notice of Intent.

(b) *Submission of evidence.* The debtor may submit evidence showing that all or part of the debt is not past due or not legally enforceable along with the notification required by paragraph (a) of this section. Failure to submit the notification and evidence within 60 calendar days will result in an automatic referral of the debt to the IRS without further action. Evidence submitted by a debtor who has requested prior review of a claim under 45 CFR part 30 will not be reconsidered unless such evidence raises a new defense not considered in connection with such prior review.

(c) *Review of the record.* After a timely submission of evidence by the debtor, the claims officer will submit such evidence to a designated hearing officer, who will review all material related to the debt which is in possession of the Department. The hearing officer shall make a determination based upon a review of the written record, except that the hearing officer may order an oral hearing if the officer finds that:

(1) An applicable statute authorizes or requires the Secretary to consider waiver of the indebtedness and the waiver determination turns on credibility or veracity; or

(2) The question of indebtedness cannot be resolved by review of the documentary evidence.

§ 31.4 Determination of the hearing officer.

(a) Following the hearing or the review of the record, the hearing officer shall issue a written decision which in-

45 CFR Subtitle A (10-1-03 Edition)

cludes the supporting rationale for the decision. The decision of the hearing officer concerning whether a debt or part of a debt is past due and legally enforceable is the final agency decision with respect to the past due status and enforceability of the debt.

(b) Copies of the hearing officer's decision will be distributed to the designated claims officer, the Department's Office of the Assistant Secretary for Management and Budget, the debtor, and the debtor's attorney or other representative, if any.

(c) If the hearing officer's decision affirms that all or part of the debt is past due and legally enforceable, the Secretary will notify the IRS after the hearing officer's determination has been issued under paragraph (a) of this section and a copy of the determination is received by the Department's Office of the Assistant Secretary for Management and Budget. No referral will be made to the IRS if review of the debt by the hearing officer reverses the initial decision that the debt is past due and legally enforceable.

§ 31.5 Review of departmental records related to the debt.

(a) *Notification by debtor.* A debtor who intends to inspect or copy departmental records related to the debt as determined by the Secretary must send a letter to the designated claims officer stating the debtor's intention. The letter must be received by the designated claims officer within 60 calendar days from the date of the Department's Notice of Intent.

(b) *Department's response.* In response to timely notification by the debtor as described in paragraph (a) of this section, the designated claims officer will notify the debtor of the location and time when the debtor may inspect or copy departmental records related to the debt. At his or her discretion, the designated claims officer may also mail copies of the debt-related records to the debtor.

§ 31.6 Stay of offset.

If the debtor timely notifies the Secretary that the debtor is exercising a right described in § 31.3(a) and timely submits evidence pursuant to § 31.3(b), any notice to the IRS will be stayed

Department of Health and Human Services

§31.11

until the issuance of a written decision by the hearing officer which determines that a debt or part of a debt is past due and legally enforceable.

§31.7 Application of offset funds: Single debt.

If the debtor does not timely notify the Secretary that the debtor is exercising a right described in §31.3, the Secretary will notify the IRS of the debt 60 calendar days from the date of the Department's Notice of Intent, and will request that the amount of the debt be offset against any amount payable by the IRS as refund of Federal taxes paid. Normally, recovered funds will be applied first to any special charges provided for in HHS regulations or contracts, then to interest, and finally, to the principal owed by the debtor.

§31.8 Application of offset funds: Multiple debts.

The Secretary will use the procedures set out in §31.7 for the offset of multiple debts. However, when collecting on multiple debts the Secretary will apply the recovered amounts against the debts in order in which the debts accrued.

§31.9 Application of offset funds: Tax refund insufficient to cover amount of debt.

If a tax refund is insufficient to satisfy a debt in a given tax year, the Secretary will recertify to the IRS on the following year to collect further on the debt. If, in the following year, the debt has become legally unenforceable because of the lapse of the statute of limitations, the debt will be reported to the IRS as a discharged debt in accordance with §31.1(d) and 45 CFR 30.31(b).

§31.10 Time limitation for notifying the IRS to request offset of tax refunds due.

(a) The Secretary may not initiate offset of tax refunds due to collect a debt for which authority to collect arises under 31 U.S.C. 3716 more than 10 years after the Secretary's right to collect the debt first accrued, unless facts material to the Secretary's right to collect the debt were not known and could not reasonably have been known

by the officials of the Department who were responsible for discovering and collecting such debts.

(b) When the debt first accrued is determined according to existing law regarding the accrual of debts. (See, for example, 28 U.S.C. 2415.)

§31.11 Correspondence with the Department.

(a) All correspondence from the debtor to the Secretary concerning the right to review as described in §31.3 shall be addressed to the appropriate office of the Department at the following locations:

Office of the Secretary: Office of Financial Operations, Room 705D, Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201

Public Health Service: PHS Claims Office, Room 18-20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857

Social Security Administration: SSA Claims Office, P.O. Box 17042, Baltimore, Maryland 21235

Health Care Financing Administration: CMS Claims Office, Division of Accounting, P.O. Box 17255, Baltimore, Maryland 21203

Family Support Administration: FSA Claims Office, Switzer Building, Room 2222, 330 C Street SW., Washington, DC 20201

Region I: Office of the General Counsel, John F. Kennedy Federal Building, Room 2047, Boston, Massachusetts 02203

Region II: Office of the General Counsel, Jacob K. Javits Federal Building, Room 3908, New York, New York 10278

Region III: Office of the General Counsel, 3535 Market Street, Room 9100, P.O. Box 13716, Philadelphia, Pennsylvania 19101

Region IV: Office of the General Counsel, 101 Marietta Tower, Room 221, Atlanta, Georgia 30323

Region V: Office of the General Counsel, 18th Floor, 300 South Wacker Drive, Chicago, Illinois 60606

Region VI: Office of the General Counsel, 1200 Main Tower, Room 1330, Dallas, Texas 75202

Region VII: Office of the General Counsel, 601 East 12th Street, Room 535, Kansas City, Missouri 64106

Region VIII: Office of the General Counsel, 1961 Stout Street, Room 1106, Denver, Colorado 80294

Region IX: Office of the General Counsel, 50 United Nations Plaza, Room 420, San Francisco, California 94102

Region X: Office of the General Counsel, 2901 3rd Avenue, Room 580, Seattle, Washington, 98121.

(b) All other correspondence shall be addressed to the appropriate office as